



The search screen of InfoSeek which can be found at <http://infoseek.com/>

well-known in libraries are accessible along with all the new content offered by the Internet.

What are Hotlists?

Finally, one must mention the large number of often subject-specific personal "hotlists" that have been brought up as Web pages. Many individuals have created and maintained guides to the Internet sites that cover topics of interest to them. As Web pages, these incorporate direct hyperlinks (mouse-clickable immediate transfers) to those sites. Such pro-bono enthusiasm means that the individuals will probably maintain and build those sites over time through their own diligent research-saving all of us a lot of effort.

If you can find a person or agency that cares enough about a particular subject to maintain a home page for it, chances are that person or agency will rigorously maintain the page. Such sites can sometimes be found by doing a very broad term search on the Yahoo! site or any of the other search systems to which it provides links.

One can also consult the root index called the Wide Web Virtual Library (<http://www.w3.org/hypertext/DataSources/bySubject/Overview.html>) which organizes and links Websites as if they were part of some vast online research library-which, in fact, is just what they are.

In Conclusion

The Internet will continue to grow in content and complexity. Web pages grow over time, and incorporate new relevant links as they are discovered or as the developers of new pages have them linked to established ones. This is the almost self-indexing aspect of the Web. The search tools, indexes and resource lists that we have covered in this article are among those that can help keep one's Internet time as focused and productive as it is possible to be in such a dynamically evolving situation.

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Electronic Publishing: A Legal and Practical Primer

Jules Veme's 1863 prediction that in the 20th century, "Photo-telegraphy allowed any writing, signature or illustration to be sent far away... Every house was wired," was a foresight worthy of the best clairvoyant.

The Opportunity

Recent technological advances provide astonishing opportunities to make information quickly, inexpensively, and widely available in ways never before possible. In order to minimize legal risk while using this new medium, consider

developing a systematic electronic publishing policy that covers the technical and legal issues presented in this article. The policy must be free of confusing technical and legal jargon if it is to serve as a useful guideline for staff. Please note that this article presents a very brief overview of volatile and complex areas of the law.

The Challenge

Electronic publication over commercial online services and the Internet presents new legal challenges as legislatures, courts, and businesses catch up to technology already a part of everyday

life for many Americans. For example, defamation law generally provides recourse for publication (communication to a third party) of false written ("libel") or spoken ("slander") remarks that hold living persons or corporations up to hatred, contempt, or ridicule. A corporation recently sued Prodigy for libel when a subscriber posted a message accusing the corporation of criminal conduct. Prodigy was found to be responsible for the offending message because it assumed the legal role of a publisher by reviewing and managing messages posted through its system and because it exerted editorial control over content, such as screening messages for obscenities.



Kalahikiola Church in Kahala, Hawaii, one of the images shared through the World Wide Web on the National Park Service Links to the Past home page.

By contrast, a 1991 case held CompuServe not to be a "publisher" in an analogous libel suit. Why the contrary result? CompuServe did not actively manage and review materials transmitted through its system and acted more like a "common carrier" than a publisher. "Common carriers," such as mail and telephone services, are typically not held liable for the content of transmissions made through them because of the public interest in uninhibited communication and First Amendment concerns—as well as the impracticality of having common carriers review all those messages.

If you elect to monitor an online discussion you may be considered a "publisher" because you exert control over the nature of participation in the discussion. As a "publisher" you arguably may be responsible (and therefore liable) for the contents of a discussion, such as obscene or defamatory statements or the transmission of copyrighted material without permission of copyright owners. If you represent a part of the federal government, be cognizant of participants' First Amendment rights. Active control over online participation may be viewed as censorship. Excluding postings that contain obscenities may violate rights protected by the First Amendment. Governmental participation

in online discussions requires thoughtful consideration to avoid a chill, actual or perceived, on the growth of this dynamic medium.

Non-Legal Considerations

Because images may be downloaded and altered in unpredictable ways, consider the ramifications of distributing culturally-sensitive materials via digitized means. "The area of 'electronic curation' raises issues of access and control that are similar to the curatorial issues involving physical objects," according to Christine Steiner, Secretary and General Counsel of The J. Paul Getty Trust. "[These issues require a] balance between providing access to the image while maintaining control over its subsequent uses by others." Publication of images such as of prisoners of war, Holocaust-related materials, or photos of Native Americans or their sacred objects require particular sensitivity. Terence Winch, Head of Publications at the Smithsonian's National Museum of the American Indian, and his staff extensively research the identity of subjects in images of Native Americans depicted in old photographs and seek permission to use those images where possible from the person, their descendants, or tribal members.

Winch also recommends that old images of objects be carefully researched. The sacred nature of certain objects may limit the use of such photographs to certain circumstances. New photographs of sacred objects are used in consultation with appropriate tribal leaders. This special care is also consistent with the American Indian Religious Freedom Act of 1978, which provides that it is "the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian..."

The Freedom of Information Act

The Freedom of Information Act requires that governmental agencies provide access to certain governmental records. Online services are an efficient, cost-effective way for agencies to make commonly requested materials available as required by FOIA, such as organizational descriptions, rules of procedure, final opinions, and policy statements. FOIA exempts certain matters from disclosure with written justification, such as where disclosure might create an "unwarranted invasion of personal privacy" (such as certain medical or personnel records). Some other exemptions include matters of national defense or foreign policy; "trade secrets and commercial or financial information" which may be privileged or confidential; "records or information compiled for law enforcement purposes;" or "geological or geophysical information and data, including maps, concerning wells."

Copyright

Prior to dissemination of the vast array of material in government collections, staff must assess copyright status. Copyright is governed by the Constitution, the Copyright Act of 1976, case law, and through international treaties like the Berne Convention. The Copyright Act of 1976 grants protection for any original work from the moment of fixation in any tangible medium of expression. Authors have the exclusive right to reproduce, prepare derivative works, distribute copies by sale or other transfer of ownership, publicly perform, and to publicly display their works. Copyright extends to: literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works. Copyright notice and registration are no longer required for protection; however, registration does provide certain advantages in case of an infringement suit. Only an author's expression of facts and ideas are protected, not the underlying facts and ideas themselves. Note that physical ownership or possession of materials is not necessarily a useful indicator of ownership of corresponding copyrights. If you want to use work protected by copyright, you must obtain the permission of the copyright owner. Lee Woodman, Manager of Multimedia Projects for the Smithsonian Institution's Office of Telecommunications, advises, "You have to be a detective to be sure that if there is a copyright, you know who owns it, whether it is active, and get all necessary permissions."

Works For Hire

Unless otherwise agreed in writing, employers automatically own the works of their employees created within the scope of employment as "works for hire." By statute, a work made for hire may also be specially ordered or commissioned from an independent contractor provided the parties expressly agree in writing that the work shall be considered a work made for hire for use as a contribution to a collective work, motion picture, audiovisual work, translation, supplementary work, compilation, instructional text, test or answer material for a test, or atlas. If you hire independent contractors to create source material or create a home page or World Wide Website, be sure that you enter a written contract before the contractor begins work. The contract should expressly state that the contractor's work is a work for hire and that, if for any reason it is deemed not to be a work for hire, that the contractor transfers to you (your employer) his or her rights including copyrights in the work prepared under the contract (and all work materials developed in preparation

of the work). If spending federal monies, language of this sort may be mandated by procurement language.

Fair Use

"Fair use" is an exception to copyright protection that permits limited use without the permission of the owner for purposes such as satire, parody, criticism, news reporting, and research. Do not assume that simply because a proposed use is educational in nature that it is a fair use. Any use of a protected work without a license constitutes infringement, even if the use is inadvertent. Whether a use is substantially of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work."

A recent case addressed whether fair use applied to the photocopying of a journal by scientists engaged in research on behalf of their employer, a private corporation that subscribed to the journal for the scientists' use. The corporation did not obtain permission or pay additional compensation to the publisher of the journal for the photocopies. The court held that the photocopying was not a fair use but an infringement of the copyright held by the publisher of the journal. This construction of fair use does not bode well for those who reproduce materials subject to copyright, whether "fair use" is subject to a case-by-case analysis of these factors: "the purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes; the nature of the copyrighted work; the amount and sub in electronic or print form, without the permission of and possible compensation to copyright owners.

Public Domain

A work is "in the public domain" once its copyright expires, meaning that no copyright protection exists. Additionally, any work prepared by a federal employee within the scope of employment is automatically in the public domain. Copyright protection for works produced after January 1, 1978, endures for the life of the author plus 50 years. For joint works, duration is measured from the death of the last surviving author plus 50 years. Anonymous works, pseudonymous works, and works made for hire are protected for the greater of 75 years from first publication or 100 years from creation. The rules governing duration of copyright for works created or published before January 1, 1978, are sufficiently complex to warrant assistance from an attorney experienced in copyright law.

The Rights of Publicity and Privacy

The quest does not end with determination of copyright status. Even if a work is in the public domain, multiple permissions may be required to

use a single work. Say your archives include a photograph taken in 1959 by a journalist within the scope of his employment at a newspaper. The photo was never published, and the copy in your possession was given to the archive by the photographer's family. The photo is of a movie star, who is still very much alive and continues to be well-recognized. You know that the copyright in photo itself may be owned by journalists' employer as a work for hire, even though the photo was never published by the newspaper.

The newspaper still exists so obtaining copyright permission is straightforward. However, the movie star's permission may be required to reproduce her image. Celebrities or public figures" often have a legal right of publicity that protects the economic interest in their name, likeness, voice, and other aspects of their persona. Whether and how the right applies depends on the applicable state law—some states do not recognize it at all, and there is no applicable federal law. A conservative approach is to seek permission from celebrities or their families (some states extend the right for a period after death) particularly if a proposed use is more commercial than educational. Reproduction of an image on a t-shirt to be sold is likely to require permission. Digitization for transmission via an online service where the service is available for no subscription fee and is primarily for educational purposes is less likely to be troublesome. If the photo were of a politician or other public official, publicity would be even less of a concern because dissemination of information about the activities of public officials is deemed to be in the public interest.

The risk of violating the right of privacy, the "right to be let alone," is minimal in the case of the movie star and the public official because both seek out public attention and voluntarily live in the public eye. However, if the photo was taken without permission in a private context—if perhaps the photographer used a telephoto lens to catch his subjects at home—publication of the image could infringe upon the subject's right of privacy. Also, a photo taken in a private setting with the subject's consent for a particular use (such as the photographer's personal photo album) should not be used for another purpose (such as digitization for international online dissemination) without the permission of the subject.

The right of privacy tends to relate to private persons more than celebrities because private persons generally do not seek life in the public eye. Private persons may lose protection if they become the subject of newsworthy attention; this balances privacy interests with First Amendment concerns. Red flags for privacy issues are: material that intrudes on one's seclusion or private affairs,

any public disclosure of private information, material that places a person in a false light, embarrassing situations, and nudity (whether of adults or children). If working with material that raises a red flag, obtain permission from the subject or his or her estate. Remember, fair use applies only to copyright and not to publicity and privacy claims.

Obscenity

Nudity in any form also raises the red flag of obscene materials via digitized means. "The area of 'electronic curation' raises issues of access and control that are similar to the curatorial issues involving physical objects," according to Christine Steiner, Secretary and General Counsel of The J. Paul Getty Museum. Dissemination of an image (not just the solicitation of a minor to pose for such images) may result in criminal penalty even in the absence of any commercial purpose. Educational, medical, or scientific images disseminated for legitimate academic purposes are less likely to fall under the purview of "sexually explicit conduct"; there is legislative history that indicates that legitimate sex education materials would not be considered child pornography.

In selecting any images that depict nudity, consider creating a board of advisors who have appropriate subject matter expertise. An advisory board can make substantive evaluations of the scientific or educational merit of disseminating particular materials and ensure that all delicate matters and culturally-sensitive materials are presented in an appropriate context. Criminal penalties for child pornography make it advisable to be extremely conservative in any depiction of nude children—even if disseminated for academic purposes. While there are applicable federal statutes laws, varying state laws make any definitive statement on obscenity and child pornography problematic. An electronic publication policy should recognize these issues, require an evaluation of the reason and merit of disseminating sensitive images, and direct staff to consult with their general counsel's office for assistance.

Conclusion

Digitization and online endeavors require thoughtful consideration of legal risks to facilitate efforts to provide the widest possible access to information while respecting the legal rights of others. The United States government is a wondrous source of information waiting to be digitized for easy access anywhere, anytime, by anyone. Even Jules Verne would be impressed.

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